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No. 83-728

In the Supreme Court of the United States

OCTOBER TERM, 1983

HERB'S WELDING, INC., ET AL., PETITIONERS

v.

ROBERT H. GRAY, JR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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QUESTION PRESENTED

Whether a worker, injured on a fixed drilling platform in the territorial waters of the State of Louisiana in the course of providing maintenance services for platforms located in territorial waters and on the Outer Continental Shelf, is covered under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, United States Fidelity & Guaranty Co. is a petitioner, and the Director, Office of Workers' Compensation Programs, United States Department of Labor, is a respondent.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A9) is reported at 703 F.2d 176. The opinion of the court of appeals denying rehearing (Pet. App. A10-A13) is reported at 711 F.2d 666. The initial decision and order of the Benefits Review Board (Pet. App. A19-A37) is reported at 12 Ben. Rev. Bd. Serv. (MB) 752. The decision and order of the Benefits Review Board following remand (Pet. App. A46-A49) is not reported. The decisions and orders of the administrative law judge (Pet. App. A14-A18, A39-A45) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 18, 1983, and a petition for rehearing was denied on August 8, 1983 (Pet. App. A10-A13). The petition for a writ of certiorari was filed on October 14, 1983, and was granted on March 19, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 2(3) of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA or the Act), 33 U.S.C. 902(3), provides:

> The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

Section 3(a) of the LHWCA, 33 U.S.C. 903(a), provides in pertinent part:

> Compensation shall be payable under this [Act] in respect of disability or death of an employee but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel). * * *

STATEMENT

1. Respondent Robert H. Gray, Jr. was employed by petitioner Herb's Welding, Inc., a company that provided welding services to marine oil field rigs.[1] Gray was assigned to the Bay Marchand marine oil and gas field, which is located both in Louisiana territorial waters and on the Outer Continental Shelf (*i.e.*, on both sides of the line that marks the three-mile boundary).[2] His duties included repairing and maintaining oil and gas lines and the fixed platform production structures from which the lines ran. While on duty Gray lived, ate and slept on a platform situated in Louisiana waters and worked on platforms located throughout the field, in both Louisiana waters and Outer Continental Shelf waters.[3] He was transported to his daily work sites by boat or helicopter. Pet. App. A2. Approximately 25% of Gray's working time was spent on platforms located on the Outer Continental Shelf (*id.* at A26).

On July 11, 1975, the day of his injury, Gray was assigned to a platform located in the navigable waters of Louisiana (Pet. App. A2). The platform, which was owned by Chevron Oil Company, was fed by a gas flow line that extended out to the Outer Continental Shelf (*id.* at A11, A26). While Gray

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[1] Petitioners' opening brief (at ii) indicates that Herb's Welding, Inc. is no longer in existence.

[2] In general, lands under navigable waters that are within three miles of the coast line are under state jurisdiction. Submerged lands beyond this boundary are part of the Outer Continental Shelf and are subject to federal jurisdiction. 43 U.S.C. 1301(a), 1331(a).

[3] Gray normally was on duty seven days in a row, alternating with seven days off duty. See Jan. 20, 1978 Tr. 31.

was welding a gas line on the platform, an explosion occurred; in trying to run from the area, he sustained a knee injury. Petitioner United States Fidelity & Guaranty Company, the workers' compensation carrier for Herb's Welding, paid benefits to Gray under the Louisiana workers' compensation statute. However, the carrier refused to pay benefits under the Longshoremen's and Harbor Workers' Compensation Act (LHWCA or the Act), 33 U.S.C. 901 *et seq.* Pet. App. A2.[4]

2. Gray filed a claim for LHWCA benefits with the Department of Labor, contending that he was entitled to such benefits by virtue of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. (Supp. V) 1333(b). Pet. App. A15. The OCSLA provides that an individual who is injured as a result of offshore petroleum operations on the Outer Continental Shelf is entitled to receive LHWCA benefits.[5] Following a hearing, an administrative law judge determined that Gray was not entitled to LHWCA benefits because he was not "engaged in maritime em-

[4] Benefits available under the LHWCA were greater than the benefits Gray received under the Louisiana workers' compensation statute. See Pet. App. A3, A42; *Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 724 (1980).

[5] 43 U.S.C. (Supp. V) 1333(b) provides in pertinent part:

> With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

ployment" within the meaning of Section 2(3) of the Act, 33 U.S.C. 902(3). Pet. App. A14-A18.

Gray appealed to the Benefits Review Board pursuant to 33 U.S.C. 921(b). In a divided decision (Pet. App. A19-A37), the Board ruled that Gray was covered by virtue of the OCSLA and thus was entitled to LHWCA benefits (Pet. App. A26). The Board concluded that the administrative law judge had erred in requiring Gray to show that he was "engaged in maritime employment" when he claimed LHWCA benefits by virtue of the OCSLA (Pet. App. A22). The Board reasoned that Gray's employment as a welder on platforms in both territorial waters and on the Outer Continental Shelf was "integrally related to the operations enumerated in Section 1333 of the OCSLA" and that "his injury was incurred as a result of such activity" (Pet. App. A26). The Board did not reach the question whether Gray was covered under the terms of the LHWCA itself. The Board's dissenting member believed that the OCSLA was not applicable because the platform on which Gray was injured was located in territorial waters (Pet. App. A27-A37).[6]

3. Petitioners sought judicial review of the Board's decision pursuant to 33 U.S.C. 921(c). The court

[6] The Benefits Review Board remanded the case for further proceedings in accordance with its decision. However, petitioners proceeded to file a petition for review with the United States Court of Appeals for the Fifth Circuit. The court of appeals granted the motion of the Director, OWCP, to dismiss the petition for review, without prejudice to refiling after entry of the final order of the Benefits Review Board (Pet. App. A38). The administrative law judge then issued a decision and order establishing the amount of benefits to which Gray was entitled (*id.* at A39-A45), and the Benefits Review Board affirmed (*id.* at A46-A49).

of appeals affirmed without addressing the Board's analysis of coverage under the OCSLA. The court determined instead that Gray was covered under the terms of the LHWCA itself. Pet. App. A1-A9.

The court of appeals decided initially that "the LHWCA can reach an offshore oil field worker injured upon a fixed platform located in Louisiana waters" (Pet. App. A3). It concluded that fixed offshore platforms "are essential to and customarily used in the loading and unloading of crews, supplies and oil" and that they serve a function identical to that of wharves over navigable waters (*id.* at A4). The court noted that workers injured on movable drilling barges in both territorial waters and on the Outer Continental Shelf are covered under the LHWCA, as are workers injured on fixed platforms on the Outer Continental Shelf (Pet. App. A4). The court declined to create a "curious hole in LHWCA coverage" by denying benefits to workers, like Gray, who are injured on fixed platforms in territorial waters (Pet. App. A5).

The court of appeals then concluded that the situs and status tests for LHWCA coverage were met in this case (Pet. App. A6-A9). The court held that the situs of the injury was within the "expanded shoreside coverage of the Act" (*id.* at A7), because the platform on which Gray was injured functioned as a wharf and, "[b]y its location, extending from an island it adjoins navigable waters" (*ibid.*). The court held that the status test was satisfied because Gray's duties were "a central part" of the offshore drilling process, which constitutes "maritime commerce" (*id.* at A8-A9).

SUMMARY OF ARGUMENT

A. The court of appeals correctly concluded that respondent Gray, a marine welder injured on a fixed drilling platform in Louisiana territorial waters, was covered by the LHWCA. In 1972 Congress extended LHWCA coverage by redefining the term "navigable waters" to include, inter alia, piers, wharves, and "other adjoining area[s] customarily used by an employer in loading, unloading, repairing, or building a vessel." 33 U.S.C. 903(a). At the same time Congress provided that in order to be covered under the LHWCA an employee must be "engaged in maritime employment." 33 U.S.C. 902(3). Thus eligibility for LHWCA coverage now depends on proof of both "status" of the employee and "situs" of the injury.

B. Gray meets the status test for LHWCA coverage because his duties were "maritime" in nature. The work in which Gray was engaged—maintenance of offshore oil and gas lines and fixed platforms—is essential to the offshore drilling process, which has become a major maritime activity. Even if Gray's work on offshore oil operations were insufficient by itself to support the conclusion that he was engaged in maritime employment, the combination of his work on offshore oil operations and the fact that he was required to spend time on navigable waters in the regular course of his employment would satisfy the status requirement.

The conclusion that Gray was engaged in maritime employment is not inconsistent with this Court's holdings in *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969), and *Chevron Oil Co.* v. *Huson*, 404 U.S. 97 (1971), which concern admiralty tort jurisdiction and the intent of Congress in enacting the OCSLA, not the LHWCA. Nor did Congress

reject LHWCA coverage of all offshore oil workers when it failed to enact proposed legislation on that subject in 1972. Congress's action most likely reflects its desire not to deprive crew members engaged in offshore oil operations of their more lucrative Jones Act recoveries and a belief that existing legislation and the 1972 amendments would afford LHWCA coverage to all noncrew offshore oil workers.

C. Gray also meets the situs requirement for LHWCA coverage. Offshore drilling platforms are surrounded by water; in addition, they bear considerable resemblance to piers and wharves in their structure and appearance and are customarily used in the loading and unloading of crews, supplies and oil. Even if only a part of the platform on which Gray was injured was used for loading and unloading, the entire platform qualifies as a covered situs.

D. Petitioners' contention that Gray is not covered by the LHWCA is inconsistent with the principles that the Act must be construed liberally in favor of coverage and that the 1972 amendments should be read in a manner consistent with Congress's goal of creating a uniform compensation system for maritime workers. Congress was particularly concerned about avoiding situations in which workers would walk in and out of LHWCA coverage in the course of their employment. Since offshore oil workers are clearly covered by the LHWCA in connection with injuries on either fixed platforms or movable rigs on the Outer Continental Shelf and in connection with injuries on movable rigs in territorial waters, it would be anomalous to conclude that Congress meant to exclude coverage of the remaining category of injuries—those that take place on fixed platforms

in territorial waters. Offshore oil workers in any of these locations face similar maritime hazards in connection with their employment.

Exclusion of LHWCA coverage for injuries incurred on fixed platforms in territorial waters would be particularly anomalous in the case of a worker like Gray. Because he regularly travelled on water in the course of his employment and worked on platforms on the Outer Continental Shelf for 25% of his time, Gray was covered by the LHWCA in connection with injuries sustained during a substantial part of his employment. It is most unlikely that Congress intended to withhold uniform LHWCA coverage in such circumstances.

ARGUMENT

AN OFFSHORE PETROLEUM WORKER WHO IS INJURED ON A FIXED DRILLING PLATFORM IN STATE TERRITORIAL WATERS WHILE PROVIDING MAINTENANCE SERVICES FOR THE PLATFORM IS COVERED UNDER THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

The court of appeals correctly concluded that respondent Gray, a marine welder who was injured on a fixed drilling platform in Louisiana territorial waters, was covered by the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.* In amending the LHWCA in 1972, Congress sought to create a system of uniform coverage for injuries to maritime workers, thereby avoiding situations in which such workers would walk in and out of coverage during the course of their employment. Petitioners' contention that Gray's injury was not covered under the LHWCA rests on the unlikely

supposition that Congress, contrary to its general concern for uniform coverage, would have wanted to retain a situation in which offshore petroleum workers would move in and out of LHWCA coverage during the course of their working day, as they switched back and forth between fixed platforms and movable platforms or other vessels, and between jobs in territorial waters and jobs on the Outer Continental Shelf. Like the court of appeals, we see no indication that Congress intended such a "curious hole in LHWCA coverage" (Pet. App. A5). We show below that Gray was "engaged in maritime employment" within the meaning of Section 2(3) of the LHWCA and was working at a covered situs under Section 3(a) of the Act at the time he was injured. Accordingly, he qualifies for coverage under the LHWCA.

A. In Amending the LHWCA in 1972 to Extend Federal Coverage to Certain Land-Based Injuries, Congress Required Proof of "Status" of an Employee and "Situs" of an Injury

In order to understand the criteria for LHWCA coverage against which Gray's claim must be measured, some background is useful. Congress enacted the LHWCA in 1927 to provide a federal workers' compensation remedy for certain maritime injuries. See *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114, 117-124 (1962). In 1972, Congress made its "first significant effort to reform the 1927 Act and the judicial gloss that had been attached to it." *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 261 (1977). The 1972 amendments increased the level of benefits paid under the Act and overruled several cases in which this Court had defined the respective rights of longshoremen, shipowners, and employers.

Id. at 261-262. The amendments also expanded the coverage of the Act. In particular, Congress sought to end anomalies that had existed under the Act, with the goal of producing a uniform compensation scheme for maritime workers.

The original LHWCA provided for coverage of all work-related injuries that occurred on navigable waters. See *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. at 124; *Davis* v. *Dep't of Labor & Industries*, 317 U.S. 249 (1942). Coverage under the original Act stopped at the water's edge—the boundary known as the *Jensen* line.[7] *Nacirema Operating Co.* v. *Johnson*, 396 U.S. 212, 219 (1969). In *Nacirema Operating Co.*, the Court held (*id.* at 219-220) that longshoremen whose injuries occurred on a pier attached to land were not covered by the LHWCA and could receive benefits only under state workers' compensation statutes. The Court noted, however, that Congress had the constitutional power to provide for compensation for injuries to maritime workers occurring on land (*id.* at 223-224) and that "there was much to be said for the uniform treatment of longshoremen irrespective of whether they were performing their duties upon the navigable waters (in which case they would be covered under *Calbeck*), or whether they were performing those same duties on

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[7] In *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205 (1917), this Court held that a state could not apply its workers' compensation statute to an injury sustained on a gangplank between a vessel lying in navigable waters of the United States and a wharf because the federal government has the sole power, under the admiralty clause of the Constitution, to regulate such maritime injuries. Congress eventually enacted the LHWCA in response to the *Jensen* decision. See, *e.g.*, *Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 717-718 (1980).

a pier." *Director, OWCP* v. *Perini North River Associates*, No. 81-897 (Jan. 11, 1983), slip op. 19 (describing the Court's statement in *Nacirema Operating Co.*).

In enacting the 1972 LHWCA amendments Congress responded to the Court's comments in *Nacirema Operating Co.* by extending LHWCA coverage shoreward. Congress recognized that the substantial increases in LHWCA benefit levels it was enacting in 1972 heightened the apparent irrationality of the *Jensen* line that had demarcated the boundaries of federal coverage. *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 261-263. Congress considered the workers' compensation benefits offered by many states to be inadequate. S. Rep. 92-1125, 92d Cong., 2d Sess. 12 (1972). In its report on the 1972 amendments, the Senate committee stated: "It is apparent that if the Federal benefit structure embodied in [the] Committee bill is enacted, there would be a substantial disparity in benefits payable to a permanently disabled longshoreman, depending on which side of the water's edge the accident occurred * * *." *Id.* at 13. As the LHWCA then stood, the amount of benefits an injured longshoreman or other maritime worker received depended on "the fortuitous circumstance of whether the injury occurred on land or over water." *Ibid.* The Senate committee also observed that, with the advent of modern cargo-handling techniques, much of the longshoreman's work had shifted onto land. *Ibid.* See also H.R. Rep. 92-1441, 92d Cong., 2d Sess. 10 (1972).

Congress extended LHWCA coverage ashore by bringing certain areas landward of the *Jensen* line within the definition of "navigable waters." Amended Section 3(a) of the Act, 33 U.S.C. 903(a), directs

that compensation be paid for death or disability resulting from an injury "occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel)."[8] Congress perceived this shoreward extension of coverage as solving a long-standing problem for longshoremen, ship repairmen, and other "amphibious" workers who, under the original Act, had moved in and out of LHWCA coverage during the course of their working day. In Congress's view, the amended LHWCA would provide a "uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity." S. Rep. 92-1125, *supra*, at 13; H.R. Rep. 92-1441, *supra*, at 10-11. See *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 273.

The original LHWCA had included only a test based on "situs," *i.e.*, whether an injury occurred on navigable waters.[9] When it expanded the situs test to cover certain shoreside areas in 1972, Congress faced the problem that many employees working in the newly covered areas (*e.g.*, truck drivers picking up or delivering cargo) had only a transitory connection with the waterfront. Because of the diversity

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[8] Prior to 1972, the parenthetical provided only that dry docks were included within the term "navigable waters of the United States." See former Section 3(a) of the Act, 44 Stat. 1426 (previously codified at 33 U.S.C. (1970 ed.) 903(a)).

[9] The original Act also defined the term "employee," but only in negative terms. The definition excluded seamen and persons engaged by a master to load, unload, or repair small vessels. See former Section 2(3), 44 Stat. 1425 (previously codified at 33 U.S.C. (1970 ed.) 902(3)).

of employees who worked in these areas, " 'it became necessary to describe affirmatively the class of workers Congress desired to compensate.' " *Perini North River Associates*, slip op. 20 (quoting *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 264). Congress therefore amended the definition of "employee" under Section 2(3) of the Act to refer to "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker * * *." 33 U.S.C. 902(3).[10] The 1972 amendments thus moved from a test of eligibility for compensation based only on situs to a test requiring proof of both the status of the employee and the situs of the injury. *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 264-265. As we now show, Gray satisfies both parts of this test.

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[10] The original LHWCA used the term "maritime employment," but only as part of the definition of "employer." The latter term was defined as "an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock)." Section 2(4), 44 Stat. 1425. The courts rarely discussed the "maritime employment" requirement of the original Act, because the requisite "maritime employment" nexus was generally assumed to exist in the case of any employee injured while working on the water. See *Perini North River Associates*, slip op. 12; G. Gilmore & C. Black, *The Law of Admiralty* 428 (2d ed. 1975); see also *Pennsylvania R. R.* v. *O'Rourke*, 344 U.S. 334, 339-342 (1953); *Nogueira* v. *New York, N.H. & H.R.R.*, 281 U.S. 128, 131-134 (1930).

B. Respondent Gray Was "Engaged in Maritime Employment" Within the Meaning of Section 2(3) of the LHWCA

The court of appeals correctly concluded that respondent Gray was "engaged in maritime employment" within the meaning of Section 2(3) of the LHWCA, 33 U.S.C. 902(3), and that he therefore meets the status test for LHWCA coverage.[11]

1. Gray meets the status test by virtue of the fact that his duties were integral to the offshore drilling process and were therefore "maritime" in nature. The courts of appeals, including the court below, have determined the status of land-based workers on the basis of whether their activities have a "realistically significant relationship to traditional maritime activity" (Pet. App. A8). See, *e.g.*, *Thornton* v. *Brown & Root, Inc.*, 707 F.2d 149, 152 (5th Cir. 1983), cert. denied, No. 83-243 (Jan. 9, 1984); *Mississippi Coast Marine, Inc.* v. *Bosarge*, 637 F.2d 994, 997-998 (5th Cir. 1981); *Odom Construction Co.* v. *Dep't of Labor*, 622 F.2d 110, 113 (5th Cir. 1980), cert. denied, 450 U.S. 966 (1981); cf. *Fusco* v. *Perini North River Associates*, 622 F.2d 1111, 1113 (2d Cir. 1980), cert. denied, 449 U.S. 1131 (1981); *Weyerhaeuser Co.* v. *Gilmore*, 528 F.2d 957, 961 (9th Cir. 1975), cert.

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[11] The parties stipulated that Gray was injured in the course of his employment (Pet. App. A15). Petitioners do not appear to contend that Herb's Welding was not an "employer" within the meaning of Section 2(4) of the LHWCA, 33 U.S.C. 902(4). Section 2(4) now defines that term as "an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel)."

denied, 429 U.S. 868 (1976); see also *Boudreaux* v. *American Workover, Inc.*, 680 F.2d 1034, 1047, 1049 (5th Cir. 1982) (en banc), cert. denied, 459 U.S. 1170 (1983). And cf. *Foremost Insurance Co.* v. *Richardson*, 457 U.S. 668, 674 (1982). Petitioners do not challenge the applicability of this test.[12]

The court of appeals correctly applied the "realistically significant relationship" test in this case. As the court remarked, "[o]ffshore drilling—the discovery, recovery and sale of oil and natural gas from the sea bottom—is maritime commerce" (Pet. App. A9). Therefore, workers engaged in the offshore drilling process are "engaged in maritime employment." See *Jenkins* v. *McDermott, Inc.*, No. 83-3425 (5th Cir. June 14, 1984), slip op. 4148-4149; *Thornton* v. *Brown & Root, Inc.*, 707 F.2d at 153; *Boudreaux* v. *American Workover, Inc.*, 680 F.2d at

[12] In *Perini North River Associates*, slip op. 19-21, this Court rejected application of the "significant relationship" test to employees injured on navigable waters because, in establishing the separate situs and status tests in the 1972 LHWCA amendments, Congress did not intend to withdraw coverage from employees "traditionally covered by the Act, who were injured in the course of their employment on navigable waters as previously defined" (*id.* at 21 n.27). The Court did not reach the question whether the test properly applied to workers injured on land (*ibid.*). See Pet. App. A8.

The term "maritime employment" is not limited to occupations specifically enumerated in Section 2(3) of the Act. See, *e.g.*, S. Rep. 92-1125, *supra*, at 13, 16; H.R. Rep. 92-1441, *supra*, at 10-11, 14. See also *Perini North River Associates*, slip op. 21 n.27; *P.C. Pfeiffer Co.* v. *Ford*, 444 U.S. at 77-78 n.7; *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 265 n.25. The "significant relationship" test provides a reasonable criterion for determining which land-based workers, other than those specifically enumerated in the statute, can be said to be engaged in maritime employment.

1052-1053, aff'g 664 F.2d 463 (5th Cir. 1981); *Pippen* v. *Shell Oil Co.*, 661 F.2d 378, 383-384 (5th Cir. 1981); *Voison* v. *O.D.E.C.O. Drilling, Inc.*, 557 F. Supp. 715, 718 (E.D. Tex. 1982).[13] Offshore oil exploration and production involve extensive facilities and operations on navigable waters. The panel in *Boudreaux* explained the close relationship between offshore oil operations and maritime commerce (664 F.2d at 466; footnotes omitted):

> The production of oil and natural gas from the beds of navigable bodies of water and the ocean bottom has become a maritime activity. This is a major industry with peculiar maritime-related problems. Employment in an industry that provides approximately 40,000 jobs, and untold millions of dollars in revenues and that takes place primarily upon the navigable waters of the United States, bears "a significant relationship to . . . commerce on navigable waters."

Petitioners and amici contend that there is nothing in offshore oil operations that can be regarded as inherently "maritime," apparently because oil exploration and production activities take place on land as well. See Pet. Br. 11; Kerr-McGee Am. Br. 6; Texaco, et al. Am. Br. 12-16. But, of course, many activities that are clearly "maritime" in nature (*e.g.*,

[13] The Benefits Review Board held in two decisions that offshore oil workers on fixed platforms were not engaged in maritime employment for purposes of LHWCA coverage. See *Toups* v. *Chevron Oil Co.*, 7 Ben. Rev. Bd. Serv. (MB) 261 (1977); *Anderson* v. *McBroom Rig Bldg. Serv., Inc.*, 5 Ben. Rev. Bd. Serv. (MB) 713 (1977). However, in those cases the Board relied primarily on several older Fifth Circuit decisions that involved alleged maritime torts. As we show below (at 23-25), such decisions do not control the question of LHWCA coverage.

unloading cargo and transporting passengers) have close counterparts in land-based enterprises. Thus, the fact that the petroleum industry operates on land as well as offshore does not deprive the latter operations of their maritime character. See, *e.g.*, *Boudreaux*, 680 F.2d at 1049 n.30; *Hullinghorst Industries, Inc.* v. *Carroll*, 650 F.2d 750, 756 (5th Cir. 1981), cert. denied, 454 U.S. 1163 (1982).

Moreover, there are significant differences between petroleum industry operations on land and offshore. Special equipment and techniques suited to a marine environment are necessary in connection with offshore operations. Many offshore operations are conducted from vessels, particularly during the exploration stage. *Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972: Hearings on S.2318, S.525 and S.1547 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 92d Cong., 2d Sess. 833 (1972) (hereinafter cited as *Hearings*). Even after fixed platforms are in place and production begins, much activity takes place on the water, including transportation of personnel, supplies, and equipment to and from the platforms.[14] The oil and gas themselves may be transported through underwater pipes.

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[14] Two general classes of structures are used in exploring for and producing oil and gas found beneath the ocean. See Robertson, *Injuries to Marine Petroleum Workers: A Plea for Radical Simplification*, 55 Tex. L. Rev. 973, 982 (1977); *Hearings*, *supra*, at 480-486 (diagrams of structures); *id.* at 592-594 (descriptions of structures). One class of structures floats, or is capable of being floated, from site to site. Such structures include submersible and semi-submersible barges, jack-up rigs, and drill ships. The second class of structures, which includes artificial islands and fixed platforms, is attached to the ocean bottom. Robertson, *supra*, 55 Tex. L. Rev. at 982. Most exploratory drilling is done from floating structures, rather than from fixed platforms. *Ibid.* Once oil is discovered, fixed platforms are used to handle drilling of development wells and production. *Hearings*, *supra*, at 833.

Although not all offshore petroleum operations take place directly on the water, it seems appropriate to characterize all such operations as maritime in nature. While fixed offshore platforms are not regarded as vessels (see page 29 note 23, *infra*), they are nevertheless surrounded by water and clearly exist in a marine environment. The work performed on fixed offshore platforms is likely to be similar in many respects to that performed on movable structures. And, of particular significance, offshore operations, whether on movable or fixed structures, are accompanied by many of the same hazards associated with other maritime activity, including inclement weather, wet surfaces, danger of drowning, and so on. See *Hearings*, *supra*, at 550-551 (statement of E. Leland Richardson, representing the International Association of Drilling Contractors); *id.* at 594 (remarks of John R. Martzell, representing the Louisiana Trial Lawyers Association); *id.* at 831; Robertson, *Injuries to Marine Petroleum Workers: A Plea for Radical Simplification*, 55 Tex. L. Rev. 973, 994-996 (1977); Alston, *Admiralty Jurisdiction and Fixed Offshore Drilling Platforms: A Radical Plea Reconsidered*, 28 Loy. L. Rev. 379, 402-403 (1982). See also *Lemelle* v. *B.F. Diamond Construction Co.*, 674 F.2d 296, 298 (4th Cir. 1982), cert. denied, 459 U.S. 1177 (1983) (noting in support of a finding of LHWCA coverage that bridge demolition and construction pose many of the same hazards and working conditions as more traditional work on navigable wa-

ters).[15] Although offshore petroleum operations may not qualify strictly as "traditional" maritime activity, because they did not become technologically feasible until relatively recently, there is no reason not to identify all such operations as "maritime" in view of their close connection to the sea.

Gray's work as a welder in the Bay Marchand field was an integral part of the offshore oil operations. Construction and maintenance of maritime equipment located on landside facilities such as piers and wharves have consistently been found to constitute maritime employment. See *Hullinghorst Industries, Inc.* v. *Carroll*, *supra* (pier repair); *Trotti & Thompson* v. *Crawford*, 631 F.2d 1214 (5th Cir. 1980) (pier construction); *Odom Construction Co.* v. *Dep't of Labor*, *supra* (maintenance of mooring blocks); *Graziano* v. *General Dynamics Corp.*, 663 F.2d 340 (1st Cir. 1981) (maintenance of shipyard buildings and machinery); *Prolerized New England Co.* v. *Benefits Review Board*, 637 F.2d 30 (1st Cir. 1980), cert. denied, 452 U.S. 938 (1981) (maintenance of scrap metal cargo processing machinery); *Price* v. *Norfolk & W. Ry.*, 618 F.2d 1059 (4th Cir. 1980) (maintenance of shoreside shiploading machinery); *Newport News Shipbuilding & Dry Dock Co.* v. *Graham*, 573 F.2d 167 (4th Cir.), cert. denied, 439 U.S. 979 (1978) (maintenance of shipbuilding machinery); *Garvey Grain Co.* v. *Director, OWCP*, 639 F.2d 366 (7th Cir. 1981) (maintenance of grain cargo processing and loading machinery). Likewise, Gray's work —the maintenance of marine oil and gas lines and fixed platforms that are essential to the maritime activity of offshore oil production—was maritime in nature.

2. Even if employment in offshore petroleum operations alone were not sufficient to confer status on a worker for purposes of LHWCA coverage, offshore oil workers like Gray, who are required to spend a portion of their time on navigable waters in the course of their employment, satisfy the status test. Gray testified that he was transported between platforms, sometimes by helicopter, but "[u]sually by boat" (Jan. 20, 1978 Tr. 32). It appears that on some days Gray traveled not only to and from the platform on which he slept and ate, but also between different platforms in the course of performing a series of tasks. See *id.* at 43-45. Even when he was on the platforms, Gray was working in close proximity to the water. See page 30 note 25, *infra*.

As the court of appeals recognized (Pet. App. A4-A5), workers traveling over or through water en route to offshore drilling platform worksites are performing maritime activities within the coverage of

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[15] As respondent Gray notes (Br. 11 n.3), the Bureau of Labor Statistics has conducted a study of injuries incurred by workers in connection with oil and gas well-drilling and servicing activities. Bureau of Labor Statistics, Dep't of Labor, *Bull. No. 2179, Injuries in Oil and Gas Drilling and Services* (Aug. 1983). The Bureau's survey, which covered injured workers in 12 states and offshore rigs in the Gulf of Mexico (*id.* at 19), does not separate statistics for offshore workers from those for other workers. The Bureau's study shows (*id.* at 1) that the injury rate for oil and gas field services (19.4 per 100 workers) is more than twice the rate for all industries (8.1 per 100 workers), and that approximately 40% of the workers surveyed complained about worksite conditions, most often slippery surfaces, limited work areas, and poor weather conditions (*id.* at 3, 17). While these conditions are not unique to offshore workers, they presumably are likely to occur more frequently on offshore rigs than in land-based operations.

the LHWCA. Workers could receive LHWCA benefits for injuries incurred in the course of such travel even before the 1972 amendments. See *Nalco Chemical Corp.* v. *Shea*, 419 F.2d 572, 574 (5th Cir. 1969) (under the pre-1972 Act, an employee injured while traveling to offshore platforms worked for an "employer" within the scope of Section 2(4) of the Act, because travel over water constituted "maritime employment").[16] In *Perini North River Associates* this Court made clear that all employment that takes place on the water was "traditionally covered" by the LHWCA before its amendment in 1972 (slip op. 22, quoting S. Rep. 92-1125, *supra*, at 16) and continues to be within the scope of amended Section 2(3), since Congress did not intend to withdraw that traditional coverage.

It is apparent that Gray was not on the water "transiently [or] fortuitously" (*Perini North River Associates*, slip op. 27 n.34); rather, he was required to be on water as a regular part of his employment. Thus, at least during the time he spent on the water, he was "engaged in maritime employment" within the meaning of Section 2(3) of the LHWCA. *Perini North River Associates*, slip op. 27. That fact, combined with the maritime nature of offshore petroleum operations in general, is plainly enough to confer on

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[16] See also *Ward* v. *Director, OWCP*, 684 F.2d 1114, 1116-1117 (5th Cir. 1982), cert. denied, 459 U.S. 1170 (1983) (employment of fish-spotter airplane pilot, assisting fleet of fishing boats, possessed significant relationship to maritime activities). Cf. *Ledoux* v. *Petroleum Helicopters, Inc.*, 609 F.2d 824 (5th Cir. 1980) (crash of helicopter being used to ferry personnel and supplies to and from offshore drilling structures bears the type of significant relationship to traditional maritime activity necessary to involve admiralty jurisdiction).

Gray the requisite status for LHWCA coverage in connection with all aspects of his offshore work, including that performed on fixed platforms. Cf. *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 273 (Congress wanted to provide full coverage for persons "whose employment is such that they spend at least part of their time in indisputably longshoring operations and who, without the 1972 Amendments, would be covered for only part of their activity").

3. Petitioners contend (Br. 7-10) that the court of appeals' conclusion that offshore drilling is maritime commerce conflicts with this Court's holdings in *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969), and *Chevron Oil Co.* v. *Huson*, 404 U.S. 97 (1971). But these decisions do not concern coverage under the LHWCA; rather, they involve admiralty tort jurisdiction, with its strict requirement of injury on the water, and the intent of Congress in enacting certain provisions of the Outer Continental Shelf Lands Act.[17] See Robertson, *supra*, 55 Tex. L. Rev. at 1010; cf. *Perini North River Associates*, slip op. 22-23 n.29 (noting that *Executive Jet Aviation, Inc.* v. *City of Cleveland*, 409 U.S. 249 (1972), which concerns the application of federal admiralty tort jurisdiction to an airplane crash into navigable waters, was not relevant to determination of LHWCA coverage).

The section of the OCSLA the Court considered in *Rodrigue* and *Huson*, 43 U.S.C. (1970 ed.) 1333(a)

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[17] The OCSLA does include a section, 43 U.S.C. (Supp. V) 1333(b), providing that workers injured as a result of petroleum operations on the Outer Continental Shelf will receive LHWCA benefits. See page 4, note 5, *supra*. However, that provision was not at issue in *Rodrigue* and *Chevron*, which involved tort actions by workers against parties other than their employers.

(2), provided that the laws of the adjacent states would apply to artificial islands and fixed structures on the Outer Continental Shelf to the extent they were not inconsistent with federal laws and regulations. In *Rodrigue*, the Court determined that under Section 1333(a)(2) Louisiana law, rather than the federal Death on the High Seas Act, governed a wrongful death action arising out of an injury on an artificial island oil drilling platform located on the Outer Continental Shelf. In *Chevron*, the Court similarly determined that the Louisiana statute of limitations, rather than the admiralty doctrine of laches, governed a tort action based on an injury on an artificial island drilling rig on the Outer Continental Shelf. The Court based these holdings in part on its conclusion that, for admiralty law purposes, such drilling platforms should not be treated as vessels or navigational aids. *Rodrigue*, 395 U.S. at 359-361; *Huson*, 404 U.S. at 100-105. Because admiralty law did not apply to injuries on land or "extensions of land" (such as piers or ramps running into the sea), the Court concluded that state law would govern by virtue of Section 1333(a)(2).[18]

The Court also concluded in *Rodrigue* that even if admiralty law would have applied to artificial island drilling rigs under traditional principles, it was clear from the legislative history of the OCSLA that Congress did not intend that result. There was affirmative evidence that Congress intended such structures to be treated as islands, or as federal enclaves within a landlocked state. The Court pointed out that al-

[18] The Court in *Rodrigue* also noted that the Death on the High Seas Act would provide far less comprehensive remedies to artificial island workers than would state law as adopted by the OCSLA. 395 U.S. at 361.

though Congress was aware that it could have extended the admiralty jurisdiction to these artificial islands, it concluded that application of maritime law would be inappropriate, particularly in view of the special relationship between workers on the artificial islands and the adjacent shore to which they commuted. *Rodrigue*, 395 U.S. at 361-366.

Rodrigue does not stand for the proposition that offshore oil work on fixed platforms is nonmaritime; rather, it is based on the premise that injuries on fixed platforms—like injuries on piers or jetties (395 U.S. at 360)—are not within the *admiralty* jurisdiction because they do not take place on navigable waters. See Robertson, *supra*, 55 Tex. L. Rev. at 1010-1011 n.247. Unlike admiralty law, the LHWCA no longer requires that an injury occur on navigable waters; as we described above, Congress has extended LHWCA coverage landward in order to avoid the anomalies in coverage that resulted from the pre-1972 constraint. Moreover, unlike the legislative history of Section 1333(a)(2) of the OCSLA, the legislative history of the 1972 LHWCA amendments does not reflect any special concern that state statutes should govern offshore platform workers; indeed, as we explained above, Congress's preference was for expanded federal coverage in the area of workers' compensation, because it perceived state benefits to be inadequate.[19]

[19] Amici Texaco, et al., likewise err in relying (Br. 14-15) on *Sohyde Drilling & Marine Co.* v. *Coastal States Gas Producing Co.*, 644 F.2d 1132 (5th Cir.), cert. denied, 454 U.S. 1081 (1981), an admiralty tort case that arose under the Admiralty Extension Act, 46 U.S.C. 740. The Fifth Circuit itself has rejected the application of *Sohyde Drilling* to LHWCA cases because it concerns the question "whether the wrong asserted—the injury complained of—bore a significant relationship to maritime activity." *Pippen* v. *Shell Oil Co.*,

If anything, *Rodrigue* and *Chevron* help Gray, rather than petitioners. The Court suggested in those cases that fixed offshore platforms are analogous to extensions of land such as piers and wharves.[20] The latter clearly are instrumentalities of maritime commerce covered by Section 2(3) of the LHWCA, even though they may not be subject to admiralty jurisdiction. Likewise, offshore drilling operations that take place on extensions of land in the form of fixed platforms are properly characterized as maritime in nature for purposes of the LHWCA, even if they are not subject to admiralty law.[21]

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661 F.2d at 384 n.10. That question is different from the LHWCA inquiry whether an individual's employment bore a significant relationship to maritime activity. See *id.* at 384 nn.9, 10. In distinguishing *Sohyde Drilling*, the Fifth Circuit has noted the difference in the legislative purposes underlying the Admiralty Extension Act and the LHWCA. See *Boudreaux* v. *American Workover, Inc.*, 680 F.2d at 1050 n.31.

[20] In discussing the application of admiralty law to artificial island drilling rigs, the Court in *Rodrigue* noted that "[a]dmiralty jurisdiction has not been construed to extend to accidents on piers, jetties, bridges, or even ramps or railways running into the sea" (395 U.S. at 360); that the accidents on the rigs "had no more connection with the ordinary stuff of admiralty than do accidents on piers" (*ibid.*); and that "the legislative history [of the OCSLA] shows that accidents on [artificial island drilling rigs], which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the [OCSLA]" (395 U.S. at 366).

[21] There is no question that Congress intended to reach beyond the traditional scope of admiralty jurisdiction when it used the term "maritime" in the 1972 LHWCA amendments. For example, Congress expressly included activities such as shipbuilding within the definition of maritime employment, despite the fact that shipbuilding was not traditionally regarded as "maritime" for purposes of admiralty contract jurisdiction. See, *e.g.*, *People's Ferry Co.* v. *Beers*, 61 U.S. (20 How.) 393 (1857).

4. Petitioners also contend (Br. 14-15) that Gray cannot be within the intended coverage of the LHWCA because Congress explicitly rejected the inclusion of offshore oil workers under the Act when it considered the "Tower bill." See S.1547, 92d Cong., 1st Sess. (1971) (Marine Petroleum Workers' Compensation Act of 1971), *reprinted in Hearings, supra*, at 24-27. The Fifth Circuit, sitting en banc in *Boudreaux* v. *American Workover, Inc.*, 680 F.2d at 1053, correctly rejected that contention. As the *Boudreaux* court explained, the Tower bill would have extended LHWCA coverage to *all* marine petroleum extraction workers, with the result that crew members on movable rigs and other vessels would have lost the right to the more generous damages available under the Jones Act, 46 U.S.C. 688. See 117 Cong. Rec. 10490-10491 (1971) (introductory statement of Sen. Tower); *Hearings, supra*, at 257-258 (remarks of Sen. Tower); *id.* at 395-397, 402, 411, 413-414, 421 (remarks of Joseph Shelton, representing the International Association of Drilling Contractors); *id.* at 530-532 (remarks of E. Leland Richardson). Representatives of maritime workers who qualified as seamen voiced strong opposition to the proposed elimination of the Jones Act remedy. See *id.* at 574-590 (remarks and statement of William Moody, representing the Maritime Trades Department, AFL-CIO); *id.* at 591-613 (remarks and statement of John R. Martzell).

At the time the Tower bill was proposed, it was undisputed that noncrew offshore oil workers injured on any type of platform on the Outer Continental Shelf were covered by the LHWCA by virtue of the

OCSLA, 43 U.S.C. (Supp. V) 1333(b). See page 4 note 5, *supra*. In addition, it was clear that noncrew workers who were injured on movable rigs in territorial waters were covered by the LHWCA, since such rigs are considered vessels (see page 29 note 23, *infra*). *Boudreaux* v. *American Workover, Inc.*, 680 F.2d at 1053; *Hearings*, *supra*, at 395-397 (remarks of Joseph Shelton); *id.* at 487 (excerpt from The Jones Act Committee Report on Investigative Phase); *id.* at 511-514, 531-532 (remarks of E. Leland Richardson); *id.* at 592-594 (remarks of John R. Martzell). It seems most likely that Congress rejected the Tower bill because it believed that existing legislation, combined with the 1972 amendments, would afford LHWCA coverage to all noncrew offshore oil workers, and because it did not wish to deprive crew members of their more lucrative Jones Act recovery. See *Boudreaux*, 680 F.2d at 1053.[22]

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[22] *Victory Carriers, Inc.* v. *Law*, 404 U.S. 202 (1971), relied on by petitioners (Br. 17), is inapposite. *Victory Carriers* involved not the LHWCA but rather the attempted invocation of admiralty jurisdiction in a longshoreman's suit against a shipowner based on injuries sustained on a wharf. The case arose before Congres extended LHWCA coverage to such locales, and it was alleged that the state workers' compensation remedy available to the longshoreman provided inadequate benefits. The Court nevertheless declined to extend admiralty jurisdiction in the absence of congressional authorization. The Court did note that "if denying federal remedies to longshoremen injured on land is intolerable, Congress has ample power under Arts. I and III of the Constitution to enact a suitable solution." 404 U.S. at 216 (footnote omitted). Of course, that is precisely what Congress did in expanding LHWCA coverage in 1972.

C. Respondent Gray Was Injured on a Covered Situs Within the Meaning of Section 3(a) of the LHWCA

The court of appeals correctly concluded that the location of Gray's injury—a fixed marine petroleum production platform—falls within the expanded shoreside coverage of the amended LHWCA. Before 1972, when coverage of the Act extended only to injuries "occurring upon * * * navigable waters," 44 Stat. 1426, fixed platform injuries that occurred within state territorial boundaries were not compensable, because, unlike floating barges and other types of mobile drilling rigs, fixed platforms are not vessels. See Robertson, *supra*, 55 Tex. L. Rev. at 992-994.[23] However, the 1972 amendments to the Act expanded the definition of "navigable waters" to include, inter alia, piers, wharves, and terminals, as well as "other adjoining area[s] customarily used by an employer in loading [or] unloading * * * a vessel." 33 U.S.C. 903(a).

The statutory reference to "other" adjoining areas is broad enough to include fixed platforms.[24] Such

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[23] Because of their mobility, floating rigs are treated as vessels. See, *e.g.*, *Producers Drilling Co.* v. *Gray*, 361 F.2d 432, 436-437 (5th Cir. 1966); *Hendon* v. *Marathon-LeTourneau*, 414 F. Supp. 1282 (S.D. Miss. 1976). Injuries on the rigs are therefore "injuries occurring upon the navigable waters," compensable under both the original LHWCA and the 1972 amendments. See, *e.g.*, *Perini North River Associates*, *supra*; *Boudreaux* v. *American Workover, Inc.*, 680 F.2d at 1052, 1053; Robertson, *supra*, 55 Tex. L. Rev. at 986-987. Stationary rigs are not regarded as vessels. *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U.S. at 359-361; *Bertrand* v. *Shell Oil Co.*, 489 F.2d 293, 295 (5th Cir. 1973).

[24] In several decisions a Department of Labor administrative law judge has concluded that a fixed offshore platform is

platforms are, of course, completely surrounded by water. Like piers, fixed platforms generally are elevated above water, with supports that reach down to the seabed. See *Hearings*, *supra*, at 480, 484. Since fixed platforms are of limited size,[25] an individual standing on such a platform presumably is always aware that he is working close to (and in many cases directly above, see illustrations at *Hearings*, *supra*, at 480, 484) navigable waters. As the court of appeals observed (Pet. App. A4), petroleum production platforms serve the functions of wharves in that they are "essential to and customarily used in the loading and unloading of crews, supplies and oil." Indeed, as we noted above (page 26 note 20, *supra*), this Court in *Rodrigue* suggested that artificial island drilling rigs were similar in some respects to structures such as piers and wharves. The similarity is not surprising in view of the fact that production of oil from coastal waters apparently began from piers in the Santa Barbara Channel. *Hearings*, *supra*, at 831.

Amici Texaco, et al., contend (Br. 7) that nothing in the record indicates that any part of the platform on which Gray was injured was used to load or unload vessels. The court of appeals' contrary conclusion is supported by the testimony that Gray himself and his equipment were transported between platforms "[u]sually by boat" (Jan. 20, 1978 Tr. 32; see also

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a covered situs. *Neal* v. *Wilson Wireline Services*, 2 Ben. Rev. Bd. Serv. (MB) (ALJ) 88 (1975); *Henning* v. *Vacco Wireline Service*, 2 Ben. Rev. Bd. Serv. (MB) (ALJ) 87 (1975); *Wiley* v. *Wilson Wireline Services*, 2 Ben. Rev. Bd. Serv. (MB) (ALJ) 86 (1975).

[25] The area of the upper deck of a fixed drilling platform often is in the range of 200 feet square. See *Hearings*, *supra*, at 834; see also *id.* at 836 (referring to a platform with a 150-foot square deck).

Pet. App. A2). In any event, there is no reasonable basis on which to dispute the court of appeals' conclusion. See Kerr-McGee Am. Br. 3.

Amici Texaco, et al., also contend (Br. 7) that a claimant must show that his injury occurred in the particular part of a covered adjoining area that was customarily used for loading and unloading vessels. The record does not indicate Gray's exact location on the platform at the time of his injury. But this Court's decision in *Northeast Marine Terminal Co.* v. *Caputo* makes clear that when a facility adjoins the water and at least a portion of the facility is used for loading and unloading vessels, the entire facility is a covered situs. In *Caputo* the Court rejected the employer's claim that a pier used only for stripping and stuffing containers, rather than for direct loading and unloading of vessels, was not a covered situs. In the Court's view, the pier was part of an "entire terminal facility," some of which was indisputably used for loading and unloading vessels. 432 U.S. at 279-281. Thus, the Court rejected the very argument amici make here. See also *Prolerized New England Co.* v. *Benefits Review Board*, 637 F.2d at 38-39 ("expansive construction of 'adjoining area' is necessary * * * to avoid resurrecting the evil of shifting coverage that Congress sought to avoid in the 1972 amendments"); *Texports Stevedore Co.* v. *Winchester*, 632 F.2d 504, 514-516 (5th Cir. 1980) (en banc), cert. denied, 452 U.S. 905 (1981) (entire "area" adjoining water is covered situs).[26]

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[26] We do not suggest, *e.g.*, that the entirety of any island would qualify as a covered situs merely because its shores were used for loading or unloading. The artificial "islands" and fixed platforms used in the maritime petroleum industry are of limited size (see note 25, *supra*) and resemble piers

D. Petitioners' Contention That Gray Is Not Covered Under the LHWCA Is Inconsistent With the Principles That the Act Must Be Read Liberally and Should Be Construed to Promote Congress's Objective of a Uniform Compensation System for Maritime Workers

Petitioners contend (Br. 13-15) that Congress could not have meant to bring offshore oil workers like Gray within the coverage of the LHWCA, since it did not specifically refer to such workers when it enacted the 1972 amendments. That contention is inconsistent with this Court's repeated recognition that the Act must be given an expansive construction to fulfill its remedial purposes. And, more important, petitioners' claim disregards Congress's intent to create a uniform compensation system for maritime workers. Under petitioners' interpretation of the Act, workers like Gray would walk in and out of LHWCA coverage during the course of their employment, as they moved from boat to fixed rig to movable rig, and as they switched from assignments in territorial waters to assignments on the Outer Continental Shelf. That

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and wharves far more than they resemble natural islands. See, *e.g.*, *Hearings*, *supra*, at 480, 484, 485, 830, 833.

It is of no consequence that the platform on which Gray was injured may not have been "used for loading and unloading by Gray's employer, Herb's Welding, but by the platform's owner (Chevron)" (Kerr-McGee Am. Br. 3 n.3). The platform is a covered situs if it is customarily used for significant maritime activity by any statutory employer. See *Texports Stevedore Co.* v. *Winchester*, 632 F.2d at 515; *Odom Construction Co.* v. *Dep't of Labor*, 622 F.2d at 114-115. Cf. *Novelties Distribution Corp.* v. *Molee*, 710 F.2d 992, 994-997 (3d Cir. 1983), cert. denied, No. 83-538 (Jan. 23, 1984); *Hullinghorst Industries, Inc.* v. *Carroll*, 650 F.2d at 757. There is no suggestion that Chevron was not an employer within the meaning of the LHWCA. See 33 U.S.C. 902(4).

construction is clearly at odds with congressional intent.

1. To the extent there is uncertainty about the scope of the LHWCA, it should be resolved in favor of coverage. This Court has held that the Act must be " 'liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results.' " *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 268 (quoting *Voris* v. *Eikel*, 346 U.S. 328, 333 (1953)). See also *Perini North River Associates*, slip op. 18. Courts applying this principle have held that the "broadest ground [the Act] permits of should be taken." *De Bardeleben Coal Corp.* v. *Henderson*, 142 F.2d 481, 484 (5th Cir. 1944), quoted with approval in *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. at 130. This Court has specifically characterized the 1972 amendments as "remedial" legislation that reflects solicitude for maritime workers and a "broad[] congressional purpose of expanding coverage." *Sun Ship, Inc.* v. *Pennsylvania*, 447 U.S. 715, 725-726 (1980); *P.C. Pfeiffer Co.* v. *Ford*, 444 U.S. at 83; *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 268. In view of the remedial nature of the 1972 amendments, it would be inappropriate to read them as foreclosing LHWCA coverage for offshore oil workers in Gray's position simply because Congress did not state expressly that such workers are to be covered.

2. Exclusion of workers like Gray from LHWCA coverage would be clearly inconsistent with Congress's express purpose of creating a uniform compensation system for maritime workers through enactment of the 1972 amendments. As we explained above (at 13), Congress was particularly concerned with removing situations in which employees would walk in and out of LHWCA coverage in the course of their working day, as they had under the original Act.

This Court has recognized on several occasions that the provisions for LHWCA coverage should be construed expansively in order to achieve Congress's goal of uniform coverage for employees who regularly move between land and water. *P.C. Pfeiffer Co.* v. *Ford*, 444 U.S. at 83-84; *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 268.

In *Caputo* the Court held that a checker and a terminal laborer were "engaged in maritime employment" for purposes of the status requirement of the amended LHWCA, even though they were not directly involved in unloading a vessel. The Court expressly rejected a "point of rest" theory, under which maritime employment would include only that portion of the unloading process that takes place before the longshoring gang places cargo on the pier, in large part because it viewed that theory as inconsistent with the congressional intent to provide expanded, uniform coverage. 432 U.S. at 274-277. The Court likewise concluded that the situs test for coverage had been met, despite the fact that the checker was injured in a part of the terminal that was not used for the immediate loading and unloading of vessels. See *id.* at 279-281; page 31, *supra*. In *Ford* the Court rejected a definition of "maritime employment" that would have required that on the day of his injury on land the employee could have been assigned to work on navigable waters. Since both claimants in that case were engaged in duties longshoremen normally perform in the course of transferring goods between ship and land transportation, the Court concluded that they were an integral part of the loading and unloading process and were therefore engaged in maritime employment, even though neither claimant moved cargo directly to or from a vessel. 444 U.S.

at 81-84. The Court noted that this result served the congressional purposes of expanding coverage to onshore maritime duties, applying a simple uniform standard, and reducing the number of employees walking in and out of coverage. *Id.* at 83-84 & n.18.

In view of Congress's goal of a uniform compensation system and its concern with avoiding situations in which employees would walk in and out of coverage in the course of their employment, Congress could not have intended to exclude LHWCA coverage for injuries of those marine petroleum workers who happen to be working on fixed platforms in territorial waters. Offshore oil workers who are injured in other locations are entitled to receive LHWCA benefits.[27] In 1953, Congress extended LHWCA coverage to injuries resulting from petroleum production-related activities on the Outer Continental Shelf, through enactment of the OCSLA, 43 U.S.C. (Supp. V) 1333(b). See page 4 note 5, *supra*. Accordingly, LHWCA compensation is available for injuries sustained on either floating rigs (*Guidry* v. *Continental Oil Co.*, 640 F.2d 523, 530 & n.21 (5th Cir.), cert. denied, 454 U.S. 818 (1981)) or fixed rigs (*Smith* v. *Chevron Oil Co.*, 517 F.2d 1154, 1156 (5th Cir. 1975)) on the Shelf. LHWCA coverage also exists for workers injured on movable rigs in territorial waters, because such rigs are treated as vessels. See page 29 note 23, *supra*. A conclusion that Congress meant to exclude from LHWCA coverage the remain-

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[27] We do not refer here to offshore oil workers who are part of the crew of a vessel. LHWCA coverage does not extend to any offshore oil worker who qualifies as a master or member of a crew of a vessel. See 33 U.S.C. 902(3); 43 U.S.C. (Supp. V) 1333(b)(1). Masters and crew members retain the traditional remedies available to seamen, including recovery under the Jones Act.

ing category of injuries to marine petroleum employees—those that occur on fixed rigs in territorial waters—would reintroduce the "checkered" coverage that the 1972 amendments to the Act were designed to eliminate. See generally *Northeast Marine Terminal Co.* v. *Caputo*, *supra*.[28]

Moreover, such a distinction would make little sense. Even a glance at the illustrations of different types of rigs, included in the 1972 Senate hearings, shows how similar movable rigs and fixed platforms may be. For example, both jack-up barges (see *Hearings*, *supra*, at 482) and fixed platforms (see *id.* at 484) are supported by structures that reach down into the seabed, although the former are regarded as vessels and the latter are not. As we noted above (at 19), all offshore petroleum workers—whether on fixed or movable rigs, whether in territorial waters or on the Outer Continental Shelf—face special maritime hazards. Denial of benefits only in the case of those offshore oil workers who incur injuries on fixed platforms in territorial waters would clearly frustrate the congressional goals of expansive coverage and uniformity. See generally *P.C. Pfeiffer Co.* v. *Ford*, 444 U.S. at 83-84. As the court below recognized, it would not be defensible to "create [such] a curious hole in LHWCA coverage" (Pet. App. A5; footnote omitted).

Denial of LHWCA benefits to an individual like Gray would be particularly anomalous. Gray is an amphibious worker—one who walked in and out of

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[28] Senator Eagleton, who chaired the hearings on the 1972 amendments to the LHWCA, expressed the view that it should not make a difference, for coverage purposes, whether fixed platforms were located in territorial waters or on the Outer Continental Shelf. *Hearings*, *supra*, at 594.

coverage under the old Act. He was subject to assignment to jobs on a number of different platforms throughout the Bay Marchand oil field. Gray was clearly covered under the LHWCA in connection with injuries he might incur while traveling to and from the drilling rigs on which he worked. He was also covered with respect to any injury he might incur while working on rigs located on the Outer Continental Shelf (on which he spent 25% of his working time). To the extent Gray may have worked on movable rigs in territorial waters, he would have received LHWCA benefits for any injuries he experienced on such rigs. See pages 27-28, *supra*.[29] Gray would even have been covered in connection with an injury he suffered while he worked on a fixed platform in territorial waters if, *e.g.*, he had been standing on a boat while welding the side of the platform. Congress could hardly have wanted a worker's right to receive LHWCA benefits to depend on the "fortuitous circumstance" (S. Rep. 92-1125, *supra*, at 13) of whether his injury occurred while he was standing on a platform or directly beside it.

Congress intended that maritime employees like Gray, who previously had been covered during part of their employment, would receive uniform LHWCA coverage under the 1972 amendments. See *Perini North River Associates*, slip op. 21 n.27; *P.C. Pfeiffer Co.* v. *Ford*, 444 U.S. at 83; *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. at 273-274. Therefore,

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[29] Many offshore employees presumably divide their time between fixed platforms and movable structures. See, *e.g.*, *Pippen* v. *Shell Oil Co.*, 661 F.2d at 383 n.6, noting Pippen's testimony that approximately 75% of his offshore work as a wireline operator was on inland barges and floaters, as opposed to fixed platforms.

it is most unlikely that Congress intended to deny LHWCA coverage to Gray and others like him during the time they were working on fixed rigs located in territorial waters.[30]

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[30] As we argued in our Brief in Opposition (at 10-11), we believe that Gray was entitled to LHWCA benefits for the additional reason that he was injured "as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources * * * of the subsoil and seabed of the outer Continental Shelf," and thus came within the terms of the OCSLA, 43 U.S.C. (Supp. V) 1333(b). The Benefits Review Board adopted this reasoning, but the court of appeals did not address the issue directly. Cf. Pet. App. A10-A13. If the Court should reject our argument that Gray was covered under the terms of the LHWCA itself, we believe that the proper course would be for the Court to remand to the court of appeals for consideration of the alternative argument for coverage based on the OCSLA.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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